

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5133 of 1998

Between:

Takkidi Sita, W/o.Satyanarayana Raju, R/o.Kakinada,

Now residing at Motilal Nehru Nagar, Hyderabad.

... PETITIONER

AND

1. The Vice-Chairman-cum-Managing Director, A.P.Fisheries Corporation
Ltd.Tank Bund Road, Hyderabad.
2. The Commissioner of Fisheries,

Govt. of A.P.,Tankbund Road, Hyderabad.
3. The Principal Secretary, Govt.of A.P., Fisheries and Animal
Husbandary, Secretariat Buildings, Hyderabad.
4. Principal Secretary, Govt. of A.P., General Admn.(PE.I)

Department, Secretariat, Buildings, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus declaring that the 1st respondent's proceedings issued in Ref.No.APFC/HD/G 45/93/75, dated 19.12.1997, relieving the petitioner from service with immediate effect in pursuance of the Government Memo No.1038/PE/A.2/94-4, dated 23.1.1996 and Govt.Memo No.52055/PE.I/A.2/97.5, dated 1.10.1997, is null and void, unconstitutional and against principles of natural justice and direct the respondent authorities to allow the petitioner to continue in service as a sweeper in the 1st respondent's department with back wages. **(Amended as per Court orders in W.P.M.P.No.20301 of 1998, dated 11.11.2004)**

Counsel for the Petitioner: MR.G.KRISHNA MURTHY

Counsel for the Respondent No.1: MR.C.V.MOHAN REDDY.

Counsel for the Respondent Nos.2 to 4: G.P. FOR FISHERIES

The Court made the following :

ORAL ORDER:

This writ petition was originally filed seeking a writ of mandamus declaring the Memo No.1038/PE.I/A2/94-4 General Admn. (PE.I) Department, dated 23.01.1996, as arbitrary and violative of Articles 14, 16, and 21 of the Constitution of India, and to permit the respondents not to compel the petitioner to opt for Voluntary Retirement Scheme (VRS scheme). After looking into the counter filed by the respondents, the petitioner filed W.P.M.P.No.20301 of 1998, seeking amendment of the prayer, as follows:

“To issue a writ of mandamus declaring that the 1st respondent’s proceedings issued in Ref.No.APFC/HD/G 45/93/75, dated 19.12.1997, relieving the petitioner from service with immediate effect in pursuance of the Government Memo No.1038/PE/A.2/94-4, dated 23.1.1996 and Govt.Memo No.52055/PE.I/A.2/97.5, dated 1.10.1997, is null and void, unconstitutional and against principles of natural justice and direct the respondent authorities to allow the petitioner to continue in service as a sweeper in the 1st respondent’s department with back wages”

The said W.P.M.P. was posted today along with the writ petition and the same is taken up for hearing.

The facts are not in dispute. The petitioner was appointed as a Sweeper in the freezing plant of the first respondent at Kakinada in the year 1977 on daily-wage basis. Subsequently, her services were regularized with effect from 13.11.1990 and her probation in the said cadre was also declared to have been completed on 17.7.1991. Thereafter, she was continued as such, and was drawing periodical increments. While so, the respondents corporation introduced VRS scheme in the year 1996, vide its Memo dated 23.1.1996, asking its employees to opt for the benefits of the said scheme. Admittedly, the petitioner applied for voluntary retirement under the VRS scheme in May, 1997. However, her application was not accepted on the ground that she had not put in ten years of service, as required under the VRS scheme. While the said application was pending, the petitioner was transferred to Head Office at Hyderabad on 24.6.1997 along with others, whose

applications for voluntary retirement were also not accepted. While working at head office, the petitioner went on maternity leave from 10.09.1997 onwards, and thereafter, she was also granted sick leave till 7.1.1998, after obtaining ESI permission. In the meanwhile, the VRS scheme, which was introduced on 23.1.1996, was got amended, and clause-6-A of the said amendment reads as under:

“Clause 6-A: Special packages for voluntary wind up situations.

- i. The minimum service of 10 years and 1 year left over service not applicable,
- ii. The entire package of benefit should not be less than Rs.30,000/-.”

In view of the above amendment, as the petitioner did not withdraw her VRS application, her claim for voluntary retirement under the said scheme was considered as per the amendment, and sent to the Pension Payment Office for scrutiny during the month of November, 1997. After acceptance of the claim of the petitioner, relieving orders have been issued to her vide proceedings dated 19.12.1997 along with the Demand Drafts to meet the benefits under the VRS scheme. The petitioner refused to receive the letter dated 1.1.1998 issued by the Regional Deputy Director of Fisheries, Kakinada, and the postal endorsement “refused” is filed as Annexure-I along with the counter affidavit filed on behalf of the respondents. However, she made some efforts to permit her to join duty, and accordingly, she sent a letter dated 18.2.1998 for withdrawal of the option given by her in the year 1997 for VRS scheme. The said withdrawal was sought for only after acceptance of her claim and after payment of the benefits under the scheme.

On behalf of the respondents, a detailed counter affidavit is filed, wherein the facts, as noticed above, are not in dispute. Even the petitioner does not dispute as to sending letter for her withdrawal from VRS scheme only on 18.2.1998.

Heard the learned counsel for the parties. Admittedly, the petitioner opted for the VRS scheme evolved under the Memo dated 23.1.1996. When the claims of a large number of employees were being rejected since they did not satisfy the condition of completion of ten years of service, clause 6-A was introduced in the VRS scheme, and the persons who have even not completed ten years of service became eligible for voluntary retirement under the VRS scheme. Since the petitioner has not

withdrawn her VRS application, along with other similarly placed persons, the case of the petitioner was also recommended for voluntary retirement under the scheme. Only when a letter was sent by the Regional Deputy Director of Fisheries, Kakinada, along with the demand draft, relieving the petitioner from duty, she refused to receive the same, which is clear from the postal acknowledgment filed by the respondents, and the said fact was not denied by her. The very scheme was introduced on 23.1.1996, and though the petitioner opted for the same, she did not get the relief immediately, and only after an amendment is made to the said scheme, she was granted the relief. Therefore, it is not open for the petitioner to challenge the same, at this length of time, particularly, when she was relieved from her duties on 19.12.1997.

In the reply affidavit filed by the petitioner, at para 12, it was asserted that some of the employees of the corporation are still being continued and some were absorbed into other Governmental Departments earlier, whereas, the petitioner was not absorbed in any other Governmental departments, or the Corporations. She was only a sweeper and she could have been accommodated in any of the Governmental organizations. Simply because some of the employees were absorbed in other departments, the petitioner cannot claim the same as a matter of right. However, the petitioner states that she has long service to do. In the above circumstances, her services can be utilized in any of the Governmental organizations on par with the other employees. Therefore, the petitioner is directed to make a detailed representation to the respondents 2 to 4, and on such representation, the respondents shall consider the same for utilizing her services in any of the Governmental organizations as a sweeper afresh, if there is any such provision, within a period of three months from the date of receipt of a copy of this order.

Writ petition is disposed of with the above observations. No costs.

11th November, 2004.

To

1. The Vice-Chairman-cum-Managing Director, A.P.Fisheries Corporation Ltd., Tank Bund Road, Hyderabad.
2. The Commissioner of Fisheries,
Govt. of A.P., Tankbund Road, Hyderabad.
3. The Principal Secretary, Govt. of A.P., Fisheries and Animal Husbandary, Secretariat Buildings, Hyderabad.
4. Principal Secretary, Govt. of A.P., General Admn.(PE.I)
Department, Secretariat, Buildings, Hyderabad.
5. Two C.Cs to the Govt. Pleader for Fisheries,
High Court buildings, Hyderabad (OUT).
6. Two C.D.copies